

1 JOHN L. WHEELER
 2 GLORIA A. WHEELER
 2 181 Hunter Avenue
 3 Oakland, CA 94603
 3 (510) 635-6903

4 Plaintiffs In Propria Persona

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8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

10 *Charles*
 11 JOHN L. WHEELER, GLORIA A.
 12 WHEELER,

13 Plaintiffs,
 14 vs.

15 BANK OF AMERICA, N.T. & S.A. a
 16 California corporation, and
 17 LIBERTY REVERSE MORTGAGE and
 SEATTLE FINANCIAL GROUP, and
 DOES 1-10, inclusive,

18 Defendants.
 19 _____ /

No. C08-03230 JL

**MEMORANDUM OF POINTS AND
 AUTHORITIES IN OPPOSITION TO
 DEFENDANT BANK OF AMERICA'S
 MOTION TO STAY PROCEEDINGS**

Date: September 25, 2008

Time: 2:30 p.m.

Place: 450 Golden Gate Ave.
 San Francisco, CA
 Dept. 6, 17th Fl.

Trial Date: None
 Complaint Filed: July 3, 2008
 Judge: Hon. Vaughn R. Walker

20 **INTRODUCTION**

21 Plaintiffs' cause of action 704080 is against Bank of
 22 America for insufficient funds.

23 In answer to the complaint, Bank of America admits that
 24 California Code of Civil Procedure §704.080 sets forth the
 25 exemptions applicable to levies by judgment creditors upon
 26 deposit accounts into which Social Security funds are directly
 27 deposited.

28 MEMORANDUM OF POINTS AND AUTHORITIES
 IN OPPOSITION TO DEFENDANT BANK OF
 AMERICA'S MOTION TO STAY PROCEEDINGS

08 SEP -4 PM 1:11
 RICHARD H. WILMING
 CLERK, N.D. DISTRICT COURT
 HON. VAUGHN R. WALKER

FILED

1 California Code of Civil Procedure §704.080 provides that
2 Social Security payments that are directly deposited by the U.S.
3 government into a bank account are exempt from levy, regardless
4 of the amount of the deposit. The statute further establishes
5 that Social Security Direct Deposit accounts are exempt from
6 levy, without the consumer having to make a claim of exemption,
7 for amounts up to \$2,000 for a single depositor account and for
8 amounts up to \$3,000 for an account with two or more depositors.

9 California Code of Civil Procedure §704.080(d) also
10 specifically requires a financial institution that holds a Social
11 Security Direct Deposit account to follow certain procedures when
12 processing a levy such that no exempt funds are seized.

13 Defendant Bank of America has engaged and in continuing to
14 engage in a business practice of unlawfully debiting accounts of
15 Social Security Direct Deposit account holders for amounts sought
16 through levy by alleged creditors including, without limitation,
17 defendant Bank of America and assessing service fees for the
18 processing of such levies. Such practices violate California
19 Code of Civil Procedure §704.080 in that Social Security Direct
20 Deposit funds are exempt from levy.

21 Defendants' violation of California Code of Civil Procedure
22 §704.080 constitutes a tort in that it is a breach of a non-
23 consensual duty owed to another. California Code of Civil
24 Procedure §704.080 was enacted for the protection of plaintiffs
25 and embodies a public policy that Social Security Direct Deposit
26 accounts shall not be subject to levy. Accordingly, defendants'

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1 violation of said statute constitutes a tort and defendants are
2 therefore liable for all damages suffered by plaintiffs.

3 This is against Bank of America because plaintiffs paid
4 defendant a cashier check No. 412925025 on November 8, 2005.

5 This is against Bank of America and Liberty Reverse
6 Mortgage, Seattle Mortgage. On 6/22/06, Liberty Reverse
7 Mortgage, Bank of America, Seattle Mortgage settlement statement
8 total disbursements to plaintiffs \$38,406.53. Equal
9 disbursements to borrower \$35,914.71, loan amount \$191,578.83,
10 total settlement charges \$17,257.59. Defendant charged
11 plaintiffs mortgage insurance premium for SMC/FHA \$7,255.80 up
12 front.

13 On Reverse Mortgage statement, each statement they are
14 charging plaintiffs for FHA Mortgage Insurance which has already
15 been paid up front. Reverse Mortgage account statement Seattle
16 Savings Bank Loan number 4393069. Bank of America charged
17 plaintiffs for FHA Mortgage Insurance each month for 11/30/07
18 \$96.84. This money was taken out up front.

19 On 6/22/06 \$7,255.80 was taken out for FHA Mortgage
20 Insurance. Also charged plaintiffs \$903.00 for title insurance.
21 ON 12/19/05 defendant Bank of America charged plaintiffs account
22 \$1,260.00. Plaintiff John Wheeler did not get this money out of
23 the bank and he did not sign for that money.

24 On 6/16/06, defendant Bank of America charged plaintiffs'
25 account \$100.00. Plaintiff John Wheeler did not sign for that
26 money.

1 Plaintiffs' case is not like Paul Miller and Scott Anderson
2 because defendant Bank of America took money from plaintiffs.
3 Plaintiff John Wheeler will exhibit this in his declaration.

4 **DEFAMATION**

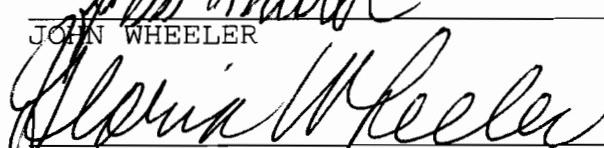
5 Bank of America defamed plaintiffs by failing to remove the
6 negative entries on plaintiffs' credit reports and, upon
7 information and belief, by declaring to potential creditors of
8 plaintiffs and plaintiffs still owed money to Bank of America
9 regarding the \$148.53. Plaintiffs paid Bank of America with a
10 Bank of America cashier check dated November 8, 2005. Defendants
11 sold this account to Asset Acceptance, LLC Collection Agency.

12 The current balance is \$543.34 that plaintiffs owe.
13 defendant Bank of America reported to Chex Systems that
14 plaintiffs were writing bad checks on insufficient funds.
15 Plaintiffs went to open up an account with Bank of the West on
16 4/9/04, November 8, 2005, and they refused to open plaintiffs a
17 checking account. Bank of the West said plaintiffs were writing
18 bad checks on insufficient funds.

19 Plaintiffs will be prejudiced by a stay in this action.
20

21 WHEREFORE, plaintiffs request that this court exercise its
22 authority to not stay this action until the appellate review of
23 Miller before the California Supreme Court is completed.

24 Dated: , 2008


JOHN WHEELER

GLORIA WHEELER

1 PROOF OF SERVICE

2 The undersigned states:

3 I am a citizen of the United States and I am employed in the
4 County of Alameda, State of California; I am over the age of 18
years and not a party to the within action; my business address
is 405 14th Street, Suite 217, Oakland, California.

5 On the date shown below, I served a true copy of:

6 **DECLARATION OF JOHN L. WHEELER IN OPPOSITION TO DEFENDANT BANK OF
AMERICA'S MOTION TO STAY PROCEEDINGS**

8 **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT
BANK OF AMERICA'S MOTION TO STAY PROCEEDINGS**

10 on the interested parties shown below in said action, by placing
11 a true copy thereof enclosed in a sealed envelope, with first
class postage fully prepaid thereon, in the United States mail at
Oakland, California.

12 I declare under penalty of perjury under the laws of the
13 State of California that the above is true and correct.

14 Executed at Oakland, California on September 3, 2008.

15 
16 JUDITH LYONS

17 Debra S. Belaga, Esq.
18 Aaron M. Rofkahr, Esq.
19 O'Melveny & Myers LLP
Embarcadero Center West
275 Battery Street
20 San Francisco, CA 94111-3305